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ABSTRACT

This report calls for the phased closure of separate, special schools in the United Kingdom as a main task in developing inclusive education. It argues that the central problem in the development of inclusive education in the United Kingdom is the continuing philosophical, financial and legislative support of segregated schooling. The report discusses how segregation in separate special schools is internationally recognized as discriminatory and damaging to individuals and society, and how segregated schooling breaches all 4 principles underpinning the 1989 UN Convention on the Rights of the Child. The report challenges assumptions sustaining segregation, including false beliefs about the impossibility of ever including all children in the mainstream, the "huge expense" of full inclusion, and the sanctity of parental choice. Further barriers to inclusion are then examined, including legislative barriers, inattention to acceptability and adaptability, and the contradictory purposes of education. The report closes with specific action points for the development of inclusive education in which every child is able to enjoy the right to education on the basis of equal opportunity and non-discrimination. A list of additional resources is included. (CR)

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Social and Educational Justice: The Human Rights Framework for Inclusion

By
Sharon Rustemier

2002

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Social and educational justice
the human rights framework for inclusion

by
Sharon
Rustemier
for

CSIE
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an independent education centre
○ supporting inclusion
○ challenging exclusion

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CSIE is publishing Social and educational justice: the human rights framework for inclusion at a time when inclusion in education is at a crossroads. Education policy makers and practitioners can use advances in anti-discrimination legislation to continue the gradual expansion of mainstream schools' capacity to respond to a greater diversity of learners without making a full commitment to human rights. Or they can adopt a human rights approach and focus clearly on a future when school restructuring is aimed at embracing all learners and ending the segregation of a minority. Sharon Rustemier's report provides a strong case for the latter.

This report delves deeply into international human rights agreements and standards and the philosophy behind them and uncovers a catalogue of uncomfortable facts.

For example:

- From a human rights perspective which recognises the rights of all children to inclusive education, the existence of segregated, special schools is a form of institutional discrimination.
- Separate special schools breach all four underlying principles of the United Nations Convention on the Rights of the Child.
- The existence of special schools represents a serious violation of children's human rights including – but not only – the right to inclusive education as understood in international human rights agreements.
- A human rights approach recognises that the rights of children to inclusive education are accompanied by the responsibilities of governments to provide it.
- Children's rights to inclusive education are universal – they apply to all children, everywhere, including those whose parents would prefer them to go to special schools.
- Violating people's human rights means treating them in a way which does not recognise their equality and dignity.
- International human rights law prioritises the elimination of inequality as a key purpose of education.
- The aims and purposes of education in the UK are at odds with human rights concerns with inclusion and with education defined by the UN objective of 'strengthening the ties which bind people'.

The report says the central task in developing real inclusive education must be the closure of separate, special schools, the transfer of all resources to mainstream settings, and the restructuring of mainstream schools to increase their capacity to respond to student diversity in its entirety.

As well as exposing violations and practices contradictory to human rights and inclusion, Sharon Rustemier's report challenges several widely held assumptions sustaining segregation, including the so-called right of parents to choose separate special schools. It also has detailed sections clarifying the meaning of inclusion and illuminating the fundamental aspects of a human rights approach.

The report closes by reflecting that, so far, the systematic violation of children's human rights in education in the UK has not been recognised sufficiently to produce a public outcry and demands for an end to segregation. CSIE hopes the greater understanding of human rights and of what is at stake when rights are denied contained in this report will help bring about a change of hearts and minds which heralds the dawning of a fully inclusive education service.

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introduction

'Inclusion' has come to mean almost everything but the elimination of exclusion.

There have been significant advances towards inclusion in the UK in recent years. The legal strengthening of the right to mainstream education for pupils with statements of 'special educational needs' and the introduction of disability discrimination, race relations and human rights laws, mark milestones in developing the capacity of mainstream schools to enable all children and young people to learn together.

The introduction of citizenship to the national curriculum, the intention to develop a 'human rights culture', and the attention to social inclusion and community cohesion represent a real concern with ending discrimination and promoting equal opportunities in education and in society. Together with the distribution in 2000 of the *Index for Inclusion*[1] to every school and local education authority (LEA) in England, the increased employment of learning supporters in schools and attention to their training and status, and a new commitment by all Government departments to involve children and young people in policy-making, the scene seems set for inclusion to become a reality in mainstream schools. There has never been a better framework for social and educational justice for disabled young people.

However, fundamental obstacles remain to the development of restructured, genuinely inclusive schools. The adoption of the term 'inclusion' into common education language signifies in many instances a genuine desire to improve the experiences of all learners. At other times it seems a concept misunderstood or even deliberately distorted. The confusion masks a deeply contradictory education system in which efforts to increase inclusion are continually beset by initiatives which promote exclusion through legislation and policy.

The current education system excludes and segregates large numbers of children from mainstream education because of learning difficulty, disability, and behaviour, despite claiming to have inclusion as its goal. Philosophical, financial and legislative support of separate 'special' schools continues. New special schools and pupil referral units are being opened at the same time as legislation against disability discrimination in schools and increasing rights to mainstream education is enacted. There are special schools that paradoxically describe themselves as inclusive.

There is no intention to reduce many of the competitive exclusionary pressures on schools in England – league tables, national tests, increasing specialisation, and selection by ability. Competition within and between schools is a heavy disincentive to investment in developing schools' responsiveness to a wide diversity of pupils, rather than focusing on those likely to achieve highly. Claims of a social model approach to disability and difficulty in learning are undermined by the continuing investment of buildings, careers and training in separate 'special' education and medical models of needs, as well as by the reluctance of mainstream schools to undertake the restructuring necessary to embrace all learners.

These deep contradictions between forces for inclusion and pressures for exclusion severely limit the impact of the inclusion reforms and outcomes.

While many more people now seem to be speaking the language of inclusion – social cohesion, community cohesion, racial integration, human rights, disability rights, rights to mainstream – what is happening in practice is much more muddled.

'Inclusion' has come to mean almost everything but the elimination of exclusion. It has become commonly accepted that there are limits as to who can be included in the mainstream – the exceptions usually being those with high level support needs and others currently in special schools, those presenting behaviour that teachers and others find challenging, and now asylum seeking children. Social inclusion is seen to be achievable through education which practices segregation. 'Human rights' has similarly come to be beset with exceptions, most notably disabled people, children, and especially disabled children. The creation of a human rights culture and the teaching of human rights, have come to be seen as unrelated to the recognition of all children's human rights *in* education.

If the opportunities for inclusion heralded by the recent legislative reforms are to be maximised, the basic tenets of inclusion need to be restated, and the continuing exclusion of some children and young people from mainstream to special schools and pupil referral units needs to be recognised as a form of institutionalised discrimination and a denial of human rights which has serious consequences for individuals and society.

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1 Tony Booth & Mel Ainscow (2000, revised and reprinted 2002), *Index for Inclusion: Developing learning and participation in schools* (Bristol: CSIE)

the meaning of inclusion

6

The *Index for Inclusion*, written by Tony Booth and Mel Ainscow, defines inclusion in education as the processes of 'increasing the participation of students in, and reducing their exclusion from, the cultures, curricula and communities of local schools'. In inclusive education, all children and young people – with and without disabilities or difficulties – learn together in ordinary educational settings with appropriate support. However, the popularising of inclusion as a key educational and societal goal has brought a lack of clarity over its fundamental precepts.

Increasing inclusion means decreasing exclusion

Fully inclusive education leaves no room for exclusion. Within an imperfect system working towards inclusion, processes of inclusion will be increasing while processes of exclusion are decreasing. However, despite contemporary claims of advancing inclusion, too often exclusion is also increasing. While access to the mainstream for pupils with statements of 'special educational needs' is being increased, access to the mainstream for those displaying challenging behaviour is decreasing. While some learners are being brought into the mainstream, others are being taken out. The result may be a changing diversity of learners in mainstream education, but it does not reflect an increasingly inclusive mainstream capable of responding to all children and young people.

Inclusion is not simply about educational placement

A child can be physically included in a group by sharing a location, but socially, emotionally and intellectually excluded by being unable to participate in the activity and in the learning that is occurring. The inclusion of wheelchair users in a sports lesson is not only about allowing them into the sports hall. It is about adapting and restructuring the curriculum activity to enable them to participate, in the context of social relationships which have developed over time and which have fostered a sense of belonging and self worth.

Inclusion is about all learners

An inclusive school is one in which *all* children and young people in the community learn together. Too often, the notion is that inclusion is about 'all *except* ...'. This insistence on exceptions to inclusion – currently all pupils in special schools and pupil referral units and potentially those in the proposed accommodation centres – is a barrier to creative, innovative education and seriously hinders moves towards developing the capacity of mainstream schools to respond to all learners. The rights of *all* children to belong should be recognised, respected and promoted – with no exceptions.

Inclusion is based on the social model of disability and difficulties in learning

Adopting the social model of disability means understanding that the sources of disability and difficulties in learning lie in the interaction between the

learner and the learning environment. The way to address these is through adapting the education provision – the physical environment, policies, practices and cultures of schools – to enable education providers to respond appropriately and constructively to individual learners. This is a major shift from the identification of problems within the child under a medical model of disability and the exclusion of those who do not meet the standards considered 'normal'. The task is to recognise that barriers to learning are constructed through interactions in the settings in which children find themselves, and then work to dismantle those barriers.

Although this social model is said to underpin moves towards educational inclusion and efforts to combat disability discrimination in schools, it sits uneasily with the system of identification, assessment and statementing of 'special educational needs'.

By definition, the notion of 'special educational needs' is concerned with identifying those children for whom extra ('special') educational provision is required, over and above what is routinely provided by the school. While this ostensibly acknowledges that the difficulty lies in the educational provision, the response is to segregate the children involved. So individual children and young people become the scapegoats for an unresponsive and inadequately resourced mainstream provision.

The increasing number of young people identified as having 'special educational needs' in mainstream schools – both with and without statements – is undoubtedly a move towards greater inclusion. However, real inclusion would result in fewer learners being identified as having 'special educational needs', because increasingly more pupils would routinely be provided for in their local mainstream schools. As a report by the Organisation for Economic Co-operation and Development (OECD) states, a fully inclusive school would treat disabled children 'as an intrinsic part of its population rather than as a sub-group requiring special treatment'.[2]

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2 OECD (1999), *Inclusive Education at Work: Students with Disabilities in Mainstream Schools* (Paris: OECD)

the human rights approach to inclusion

With the publication of *The Inclusion Charter* in 1989, CSIE placed inclusive education on a human rights platform for the first time in the UK. Today, it is relatively commonplace to hear that inclusion is a matter of human rights. The Government's own statutory guidance[3] on inclusion refers to the 1989 United Nations Convention on the Rights of the Child and UNESCO's 1994 Salamanca Statement and Framework for Action, two key international human rights texts. However, it is not clear that current exhortations to human rights reflect any real understanding of what is meant by adopting a human rights position and the implications for educational practice and policy.

According to the 1998 UNESCO teaching manual,[4] human rights are 'values that reflect human aspirations' and 'principles on the basis of which individuals can act and states legislate and pass judgement', founded on freedom, equality, justice and the dignity of the individual. The cornerstone of human rights is that human dignity resides in every person, simply by virtue of being human, and this dignity should be recognised and respected by all. The principle of equality means that all human beings are born equal before the law – they are of equal worth. Equality is recognised through the core principle of non-discrimination which runs through all international human rights agreements.

Human rights are universal. This means they are valid everywhere and for everyone without distinction of any kind. They are also indivisible. The 1998 UNESCO manual states:

> They form a whole. We cannot either select some of them or give exclusive preference to any particular category of rights without immediately undermining the very concept of human rights.

And they are interdependent:

> Each category of rights guarantees an aspect of the value of the human person and human dignity.

Given this, the implications of a human rights approach to education and inclusion are profound. Understanding these fundamental aspects of human rights clarifies exactly what is at stake when rights are denied. Violating people's human rights means treating them in a way which does not recognise their equality and dignity, that is, which undermines their humanity. Whether this is in respect of a child totally denied education in war-torn countries, or a disabled child segregated in a special school and denied relationships with most of her peers because of her impairments, the underlying message is that this young person is not perceived as being of equal worth to her peers – she is somehow not fully human.

Education influences the realisation of all other human rights – economic, social, cultural, civil and political – and is therefore the key to children's present and future life experiences. Given its capacity to both reflect and reform society's values, the development of inclusive education founded on human rights principles is of paramount importance.

Children's rights to inclusive education

That education should be inclusive is widely recognised in international human rights agreements. Segregation in special schools is internationally recognised as discriminatory and damaging to individuals and society.

The key document for children is the **UN Convention on the Rights of the Child (1989)**. It is built around four general principles which are meant to inform the interpretation of the Convention as a whole, including the right to education. These principles are:

1 non-discrimination (Article 2) – all children should enjoy all rights without discrimination and on the basis of equality of opportunity;

2 the best interests of the child (Article 3);

3 the right to life, survival and development (Article 6) – development is meant in its broadest sense, including physical health but also mental, emotional, cognitive, social and cultural, and 'to the maximum extent possible'; and

4 the views of the child (Article 12) – children have the right to be heard and to have their views taken seriously in matters affecting them.

Article 23 gives particular attention to disabled children in recognition of their extreme vulnerability to segregation and discrimination. It emphasises that disabled children, like all children, 'should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community'. The aim is for the child to achieve 'the fullest possible social integration and individual development'.

Articles 28 and 29 cover the right to education, stressing that it should be 'on the basis of equality of opportunity' and should be directed to 'the development of the child's personality, talents and mental and physical abilities to their fullest potential', to 'the development of respect for human rights and fundamental freedoms' and to 'the preparation of the child for responsible life in a free society'. These aims of education are crucial to inclusion and were restated in a UN General Comment published in 2001,[5] which also added that discrimination – including on the basis of disability – 'offends the human dignity of the child and is capable of undermining or even destroying the capacity of the child to benefit from educational opportunities.'

Rule 6 of the **UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities (1993)** is concerned with education and emphasises that this should take place 'in integrated settings', stating that 'education for persons with disabilities should form an integral part of national educational planning, curriculum development and school organization.' Furthermore, appropriate support should be provided in the mainstream as a matter of routine. Paragraph 2 states:

> Education in mainstream schools presupposes the provision of interpreter and other appropriate support services. Adequate accessibility and support services, designed to meet the needs of persons with different disabilities, should be provided.

Paragraph 6 continues:

> To accommodate educational provisions for persons with disabilities in the mainstream, States should:

1 Have a clearly stated policy, understood and accepted at the school level and by the wider community;

2 Allow for curriculum flexibility, addition and adaptation;

3 Provide for quality materials, ongoing teacher training and support teachers.

The Rules acknowledge that special education may be necessary in the short term, but only in preparation for eventual mainstream inclusion of all students.

The **UNESCO Salamanca Statement and Framework for Action (1994)** represents an agreement reached by representatives of 92 governments and 25 international organisations at the World Conference on Special Needs Education in Spain that inclusion should be the norm for the education of disabled children. It states that education should be inclusive on the basis that:

- every child has a fundamental right to education, and must be given the opportunity to achieve and maintain an acceptable level of learning,
- every child has unique characteristics, interests, abilities and learning needs,
- education systems should be designed and educational programmes implemented to take into account the wide diversity of these characteristics and needs,
- those with special educational needs must have access to regular schools which should accommodate them within a child-centred pedagogy capable of meeting these needs,
- regular schools with this inclusive orientation are the most effective means of combating discriminatory attitudes, creating welcoming communities, building an inclusive society and achieving education for all; moreover, they provide an effective education to the majority of children and improve the efficiency and ultimately the cost-effectiveness of the entire education system.

Government responsibilities for inclusive education

These international human rights texts are not simply guidelines but place obligations on governments to reform education. One of the main strengths of a human rights approach to education is the recognition that the rights of children and young people to enjoy inclusive education are accompanied by the responsibilities of governments to provide it.

Katarina Tomasevski, the UN Special Rapporteur on the right to education (the person charged with monitoring and promoting the right to education in UN countries), has explained it this way:[6]

> Human rights were invented to prevent betrayals of political commitments by translating them into legal obligations, both domestic and international. Education as a universal human right entails corresponding obligations for all governments and the right to challenge its denials and violations. Human rights have been defined as governmental obligations because neither the interplay of market forces nor charity leads to treating people – especially children – as subjects of rights.

In ratifying the 1989 UN Convention on the Rights of the Child in 1991, the UK Government agreed to take responsibility for implementing its principles, for periodically reporting progress on implementation to the UN Committee on the Rights of the Child, and for publicising these reports and the Committee's responses to them.

A report by Save the Children examining the first ten years of the Convention on the Rights of the Child[7] explains that its legal status is one of 'soft law'. There are no formal complaint mechanisms or effective sanctions that can be imposed on under-performing governments. It relies on 'moral pressure, dialogue and co-operation rather than strong enforcement mechanisms'. Nevertheless, ratification of the Convention is a major step forward:

> In ratifying, governments voluntarily accept the obligations set out in the Convention and hold themselves accountable for their success or failure in performing them. The fulfilment of children's rights passes from being an act of charity, an option or a favour, and becomes a responsibility of government ... Monitoring implementation of the Convention is a key step in holding governments to account for the fulfilment of their obligations.

Availability, accessibility, acceptability, adaptability – the '4-A scheme'

The provision of education has always meant more than making it accessible. It is not simply about getting people into a school, although that is important. Article 1 of the UNESCO Convention Against Discrimination in Education (1960) states that education 'includes access to education, the standard and quality of education, and the conditions under which it is given'. In more recent international documents, government obligations for education have been described in terms of the '4-A scheme': governments should make education *available, accessible, acceptable and adaptable*. The principle of inclusion is not only consistent with each of these objectives but necessary to their realisation.

A series of four publications called 'Rights to Education Primers' set out in detail the government obligations entailed in meeting the human right to education.[8] *Accessibility* should be provided on the basis of non-discrimination, 'the overriding principle of international human rights law'. What is considered *acceptable* is strongly guided by international human rights agreements, such as the aims and purposes of education as set out in the Convention on the Rights of the Child.

The notion of *adaptability* is specifically about the capability of an education setting and provision to respond to the wide diversity of learners in the community, with the best interests of the child as the guiding principle. In the third Primer Katarina Tomasevski writes:

> The challenge is immense – the system of education is required to adapt to each individual child, against the historical heritage of excluding all the children who were deemed not to be able to adapt to the system of education as it was.

In the UK, these responsibilities are routinely flouted, and the rights of many thousands of children and young people are persistently violated by segregation in separate special schools and pupil referral units. For example in England in 2001 86,942 5–15 year old pupils were in special schools.

3 DfES (2001), *Inclusive Schooling: Children with Special Educational Needs* (London: DfES)

4 UNESCO (1998), *All human beings ... A manual for human rights education* (Paris: UNESCO)

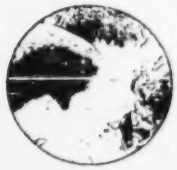
5 UN Convention on the Rights of the Child (2001), *The Aims of Education General Comment No.1 Article 29(1)*, CRC/GC/2001/1

6 Katarina Tomasevski (2001), 'Education: From Lottery Back to Rights', in *Monitor* vol.14 no.3, pages 14-17

7 Sarah Muscroft, ed. (1999), *Children's Rights: Reality or Rhetoric? The UN Convention on the Rights of the Child: The First Ten Years* (London: International Save the Children Alliance)

8 *Removing obstacles in the way of the right to education* (No.1); *Free and compulsory education for all children: The gap between promise and performance* (No.2); *Human rights obligations: making education available, accessible, acceptable and adaptable* (No.3); and *Human rights in education as prerequisite for human rights education* (No.4). All written by Katarina Tomasevski and published in 2001 by the Swedish International Development Cooperation Agency, Stockholm, and the Raoul Wallenberg Institute of Human Rights and Humanitarian Law, Lund

the problem of special schools



By far the biggest barrier to inclusive education in the UK is the continuing philosophical, financial and legislative support of special schools. Despite claims of aiming for social inclusion and developing a human rights culture in the UK, Government statutory guidance on inclusion[9] notes 'a continuing and vital role' for special schools. Yet from a human rights perspective which recognises the right of *all* children to inclusive education, the existence of special schools is a form of institutional discrimination.

Segregated schooling violates children's human rights

The human rights perspective regards an action as discriminatory if it is based on any of the prohibited grounds ('race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status')[10] and has a negative impact on a person's human rights. 'Disability-based discrimination' is defined by the Commission on Human Rights:[11]

> as including any distinction, exclusion, restriction or preference, or denial of reasonable accommodation based on disability which has the effect of nullifying or impairing the recognition, enjoyment or exercise of economic, social or cultural rights. Through neglect, ignorance, prejudice and false assumptions, as well as through exclusion, distinction or separation, persons with disabilities have very often been prevented from exercising their economic, social or cultural rights on an equal basis with persons without disabilities.

Special schools violate not only children's right to education but many of children's other human rights in the 1989 Convention on the Rights of the Child:

- time spent in residential settings or travelling long distances from home can impact on the rights to family life (Article 9) and recreational activities (Article 31);
- separation from mainstream schools violates the right to participate in mainstream activities which other children enjoy (Articles 12, 13, 15, 23);
- stories from adult survivors of special schools frequently attest to the impoverished opportunities for physical, mental and social development which deny a person the right to fulfil his or her potential (Article 29);
- Barnardo's reports that children educated outside the mainstream tend to achieve less academically, have less confidence and self-esteem, and are ill-prepared for adult life,[12] thus violating their rights to survival and development to the maximum extent possible (Article 6) and the greatest possible social integration (Article 23);
- the choice of special school legally belongs to parents with young people themselves seldom involved in this decision, violating their right to a voice in matters which affect them (Article 12).

The following description of the aims of education from the 2001 General Comment from the Committee on the Rights of the Child[13] makes clear that denying disabled children mainstream education alongside their non-disabled peers falls far short of international human rights standards:

> ... the educational opportunities made available [should] reflect an appropriate balance between promoting the physical, mental, spiritual and emotional aspects of education, the intellectual, social and practical dimensions, and the childhood and lifelong aspects. The overall objective of education is to maximize the child's ability and opportunity to participate fully and responsibly in a free society.

Following its General Discussion on the rights of children with disabilities in October 1997, the Committee on the Rights of the Child specifically stated that legislation which segregates disabled children in separate institutions 'for care, treatment or education' is 'not compatible with the principles and provisions of the Convention'.[14]

Decades earlier, Article 1 of the 1960 UNESCO Convention Against Discrimination in Education recognised as discriminatory the establishment or maintenance of 'separate educational systems or institutions for persons or groups of persons', with the exception of single sex schools, religion- or language-based schools, and private institutions.

In summary, the discrimination inherent in special schooling (Article 2), its failure to promote the child's best interests attested by its undermining of so many other human rights (Article 3), its negative impact on the child's optimum development (Article 6), and the exclusion of the child's own views (Article 12) mean that special schools breach all four underlying principles of the Convention on the Rights of the Child.

Segregated schooling undermines social inclusion

It is widely acknowledged that children learn through observation and imitation, often more thoroughly than through instruction. How can social inclusion be promoted when some children are segregated in special schools? How can disabled children be seen as anything but 'other' when they are separated for their schooling? Discrimination in education leads to discrimination in society. As a 2002 UN report explains:[15]

> Literature about discrimination abounds with assertions that prejudice breeds discrimination, yet the reverse is also true. Discrimination ... breeds prejudice. Children learn through observation and imitation. They are likely to start perpetuating discriminatory practices much before they can understand the word 'discrimination' and to internalize underlying prejudices in the same way as they accept any other facet of the way of life in their family and community. Prejudice is sustained from one generation to another through social usage.

Education is not neutral:

> Education can be used as a means to both retain and eliminate inequality. Because it can serve these two mutually contradictory purposes, international human rights law prioritizes the elimination of inequality as a key purpose of education. Many factors and processes lead in the opposite direction.

Segregation in education belies the elevation of social inclusion as a key goal of Government policy and legislation. Retaining separate special schools for disabled children and young people is a major barrier to the inclusion of disabled adults into all aspects of society. The exclusion from mainstream educational provision of young people whose behaviour is challenging similarly contributes to the perception of a class of 'criminals' who society must be protected from. Through these sharp social divisions in education, children learn to perceive certain people as inseparable from their impairments or their 'deviant' behaviour, and perpetuates a society which functions on the basis of fear of difference rather than celebration of diversity.

Assumptions sustaining segregation

Segregation in special schools is sustained by a number of deep-rooted but false premises. Two of the most entrenched are that parents must be allowed to choose special schools, and that special schools are necessary because certain children can never be included in the mainstream.

The taken-for-grantedness of these assumptions is evident in the 1999 report of the Disability Rights Task Force,[16] which was influential in the positive legislative changes in the Special Educational Needs and Disability Act 2001. Despite claiming its ultimate aim was 'the right to education without unfair discrimination, which meets the needs of the disabled person, alongside his or her non-disabled peers', the report states that 'there was no desire to curtail parental choice in favour of a special school for their child' and that 'it would be impractical to expect that all children, irrespective of degree of learning difficulty, can be educated in a mainstream setting.' It is as if these things are so self evidently true that they are not open to challenge.

'Of course, not all children can be included'

The assumption that not all children can be included means that for many disabled children, education in a mainstream setting is not even an option. Yet, increasingly, examples of the inclusion of young people with high level support needs are testimony to the fact that it is both possible and beneficial.

The argument that there will always be some children who cannot be included is undermined by huge variations in special provision between LEAs, well documented by Ofsted and the Audit Commission/Her Majesty's Inspectorate (HMI),[17] as well as the 2002 statistical report published by CSIE on variations in special school placement between LEAs.[18] Being placed in a special school, and being given a statement of 'special educational needs', varies widely across the UK in a way unrelated to the type or severity of needs. As a 1999 Ofsted report stated:[19]

> Many pupils who are placed as a matter of course in a special school within one LEA may be integrated individually (equally as a matter of course) into their local school in another.

Whether for reasons of disability or challenging behaviour, the effects of exclusion from the mainstream can be devastating. Richard Rieser of Disability Equality in Education has explained:[20]

> The outcome is often unsatisfactory with many young people leaving with no qualifications, a label which devalues them, a circle of friends who feel as hopeless as each other, a loss of confidence and self-esteem and often a rejection of society's values as they feel they have been rejected by society.

One headmaster of a primary school in the North of England recounted how he had come to realise that exclusion on grounds of behaviour was against the best interests of the child:[21]

> I was sitting there getting inspected, and that was really the first time I started to have my beliefs challenged. It was in a really rough area, disused flats all the way round the school and very disruptive pupils, and on the second day I excluded a child for violent behaviour, because that's what an advisor does, so I sent him out for five days. And I remember distinctly – it was one of those moments when your life begins to change – I'd sent this boy out and I was standing at the window and I saw him … and he was riding his bike between a white van and one of these flats and he was running the heroin wraps for local dealers. And it just struck me. Because I know this van belonged to a dealer, and it was one of the moments when I felt I can't do that, I can't morally do that. I've excluded him to a world where he can't possibly survive. So I took him back in and I created systems, I paid for full time teaching assistant support for him. And I'd done the same with a girl the same year. She had bizarre behaviour. But when I excluded her I'd excluded her to a serial abuser who lived in the house. So I stopped excluding after that ...

Including children whose behaviour is challenging and those with high level support needs is too often assumed to impinge negatively on the best interests of other children. However, there is growing evidence that when schools work inclusively, all learners benefit. One primary school in the London Borough of Newham found repeatedly that ways of helping one group of children also benefited other children. Team teaching provided a more varied, stimulating and supportive school experience for children and staff. Including children with high level support needs enabled staff to develop a wide range of learning activities and to be aware of children's differing needs at all ability levels. National test levels also improved.[22]

Following the closure of a special secondary school in Newham, one LEA officer reported:[23]

> Children with emotional and behaviour difficulties have a positive effect on mainstream schools. If teachers become used to the challenge of teaching children with difficulties over time they become better at teaching. If they can inspire the most challenging, they will inspire everyone.

Many of the techniques which are effective in dealing with disruptive behaviour will clearly benefit *all* children. These include respecting children, involving them in developing rules, giving them a sense of belonging and ownership, developing anti-bullying policies based on prevention as well as responding to breaches, offering good quality teaching for all, making links with parents and community, establishing on-site support, making a commitment to zero exclusions, and techniques of peer mediation, circle time, buddy systems, and collaborative learning and counselling.

The 1999 OECD report, which examined inclusion in many countries, including the UK, concluded that:[24]

> from organisational, curriculum and pedagogical perspectives, given certain safeguards, there is no reason to maintain generally segregated provision for disabled students in public education systems. In fact, the changes to the ways that schools function in areas such as pedagogy

> and curriculum development, and in how they are supported by outside agencies as a result of inclusive practices seem only to bring benefits to all students; disabled and non-disabled alike. The teamwork that special education and regular teachers can develop, thus effectively reducing student/teacher ratios, and the additional skills brought by special education teachers to the classroom and lesson planning are certainly part of the reason for these advantages.

Given the fact that inclusion benefits all children, while segregation seriously violates the rights of those who are excluded and impoverishes the educational and social experiences of those remaining in the mainstream, the Government's continuing support of special schools is a matter for grave concern.

'Full inclusion would be too costly'

One of the most frequently encountered barriers to full inclusion is the assumption that to include some of 'our most disabled young people' would require a vastly disproportionate amount of funding and resources – 'we just don't have the resources to include everybody'.

The issue of resources is important, and a fully inclusive education system will have significant resource implications. The need to avoid inefficiency and 'unreasonable public expenditure' is an important principle in UK education law, and appears in the reservation on the right to education in association with the 1998 Human Rights Act.

However, the assumption that inclusion is much more expensive than separate provision in a special school is unfounded. The 1999 OECD study found that it is no more expensive to provide a supported mainstream place for a child than to educate him or her in a special school. The study also concluded that it is far more expensive to operate a dual system of regular and special education than it is to run a properly resourced fully inclusive single system. The report concludes:

> the evidence continues to show that on a per capita basis inclusive systems are generally less costly to operate than segregated systems.

Ten years ago, a report by the Audit Commission[25] – the body set up to scrutinise spending of public money – and HMI, similarly found that it was no more expensive to educate a child with learning disabilities in a mainstream school with support, than in a special school. In this case, the additional costs that were perceived as arising from inclusion actually stemmed from unresponsive special schools failing to downsize their provision once students had transferred to the mainstream:

> ... all 12 LEAs [in the study] had vacant places in their special schools. This means that where a pupil might reasonably be educated in either type of school, it is doubly expensive for the LEA to educate the pupil in an ordinary school, because it then has also to bear the cost of an empty place in a special school, as well as the cost of pupil-funding and extra support in the ordinary school.

The same report estimated that the failure to adjust staffing levels in special schools once children had transferred to the mainstream could have meant that as much as £53 million was wrongly retained by special schools in England and Wales in 1991.

The cost of the identification, assessment and statementing procedures that are necessary to establish the 'need' for special school placement in the first

place are considerable. According to the 2002 Audit Commission report,[26] 15% of money spent on schools goes on 'special educational needs' services, representing an increase of 25% since 1992. In 2001–02 this 15% was £3.6 billion in England and Wales. Almost 275,000 pupils in England and Wales had a statement in 2001, an increase of 10% over the last five years. Each statement costs about £2,500 to produce, with LEAs spending about £90 million every year on statutory assessment and writing statements, not to mention the excessive diversion of professional energy and time away from direct work with schools.

The 2002 report presents an indictment against this system when it describes statutory assessment as 'a costly, bureaucratic and unresponsive process … which may add little value in helping to meet a child's needs.' It acknowledges that, despite the substantial investment, statements 'do not in practice always provide a guarantee that a child will get the provision that they need.'

The maintenance of this self validating system, in which the statement needed to guarantee the necessary resources is achieved through a process which itself uses a huge portion of the education budget, is a serious misuse of educational resources. The expenditure of large amounts of money identifying the resources a child needs, and then providing these in a segregated setting because of insufficient resources to provide them in the mainstream, is unjustifiable.

The real issue is not a question of how to find the resources for mainstream inclusion of learners with statements of 'special educational needs', but of how the continuing philosophical, financial and legislative support of segregated special education and the current assessment and statementing procedures can be justified. The inefficiency lies in the exclusion, not the inclusion.

'Parents have a right to choose special schools'

Another assumption sustaining segregation is that parents have a right to choose special schools for their children. The retention of the parental choice caveat in the 1996 Education Act – a child with a statement of 'special educational needs' should be educated in a mainstream school unless this is incompatible with 'the wishes of his parent' – elevates parental choice over children's rights in a way that is problematic and controversial from a human rights perspective. This was highlighted in the report of the UN Special Rapporteur on the right to education following her visit to the UK,[27] which noted that the 'emphasis on parental duties and rights has hampered the notion of the right of the child to education and the child's rights in education.'

Strictly speaking, parents do not have a legal right to choose their child's school but a right to 'express a preference'. Respect for parental choice is affirmed throughout international human rights texts. However, this choice is also expected to conform to human rights standards, and the state is required to constrain it when it violates the rights and best interests of the child.[28]

The principles relating to this potential conflict between the rights of parents and children are evident in the issue of corporal punishment. This is a form of physical punishment which violates children's rights to protection from all forms of violence and abuse (Article 19 of the Convention on the Rights of the Child). Corporal punishment was banned in all state-supported education in England, Wales and Scotland in the Education (No. 2) Act 1986, coming into effect in 1987, and in Northern Ireland shortly afterwards. Extension of abolition to cover all private schools in England and Wales came into effect in

1999 and in Scotland in 2001. Similar extension to cover Northern Ireland private schools is expected. Some parents have challenged this ban arguing that they have a right to choose to have their children physically disciplined in school. However, these claims have not been upheld. It is recognized that there are limits to parental choice when it involves violating the rights of the child.

Similarly, LEAs are not required under UK law to provide special schools. The 1996 Act states that LEAs should provide schools in accordance with pupils' ages, abilities, aptitudes and needs. The 1998 Human Rights Act imposes no obligation on the state to provide any specific education system, and there is no right to the school of choice – only a right of access to the educational institutions existing at any time. Given the above discussion, from a human rights perspective the provision of segregated special schools is a misuse of state power.

Many advocates of inclusion appease parents and those with vested interests in retaining special schools by campaigning against 'compulsory' segregation. They oppose LEAs being allowed to segregate children in special schools, but allow children to be segregated at their parents' wishes. Such a position ignores the fact that, for all children and young people aged 5–15, education is compulsory. For a child to be segregated in a special school will always be compulsory from the child's point of view, whether it is decided by the LEA or the parent. There is no such thing as non-compulsory segregation. A human rights-based commitment to full inclusion is incompatible with a view that parents should be allowed to choose segregated education in special schools.

Parental concerns about appropriate support in accessing the curriculum, or protection from bullying, can all be addressed through a properly resourced and organised mainstream provision, and do not require the provision of segregated schools. In any case, the idea that segregated education is the solution to bullying in mainstream schools is fundamentally flawed – segregating students only reinforces the stereotyping and intolerance of difference that fuels bullying in the first place.

Much work is necessary to restructure mainstream schools to deal with a greater diversity of children. However, neither the longstanding investment in special schools nor the present inadequacy of mainstream can justify continued segregation. Rather than parents choosing special schools for their children, their expertise and knowledge of what their child requires of a school could more positively be used to contribute towards developing an inclusive mainstream provision.

It is a sad fact that, whether through ignorance or intent, parents do not always make decisions in the best interests of their children. This is attested by the strong resistance in the UK to the anti-smacking campaign to end physical punishment within families as a way of bringing up children. As the UN Special Rapporteur on the right to education has stated:[29]

> The rights of the child entail the obligation of Governments, individual and collective, to eliminate obstacles impeding children's enjoyment of their right to education … Translating into practice every child's right to education often necessitates overcoming the resistance of adults who are the closest to children. If all parents had the best interests of their children at heart, the rights of the child would hardly be necessary.

Children's rights to inclusive education are universal – they apply to all children, everywhere, including those whose parents would prefer them to go to special schools.

9 DfES (2001), *Inclusive Schooling: Children with Special Educational Needs* (London: DfES)
10 UN Convention on the Rights of the Child, Article 2
11 UN Economic and Social Council (1996), *Promotion, protection and restoration of human rights at national, regional and international levels: Human rights and disability*, E/CN.4/Sub.2/1996/27
12 *Inclusive Education*, Barnardo's briefing, November 2000
13 UN Convention on the Rights of the Child (2001), *The Aims of Education General Comment No.1 Article 29(1)*, CRC/GC/2001/1
14 *Recommendations of the Committee on the Rights of the Child*, reproduced in Gerison Lansdown (2001), *It is our world too! A report on the lives of disabled children for the UN General Assembly Special Session on Children* (London: Disability Awareness in Action)
15 UN Economic and Social Council (2002), *Annual report of the Special Rapporteur on the right to education*, E/CN.4/2002/60
16 Disability Rights Task Force (1999), *From Exclusion to Inclusion* (London: DfEE)
17 Audit Commission/HMI (1992), *Getting in on the Act: Provision for Pupils with Special Educational Needs – the National Picture* (London: HMSO); Audit Commission (1998), *Getting in on the Act: A Review of Progress on Special Educational Needs* (London: Audit Commission); Ofsted (1999), *Special Education 1994-98: A review of special schools, secure units and pupil referral units in England* (London: The Stationery Office); Audit Commission (2002), *Statutory assessment and statements of SEN: in need of review?* (London: Audit Commission)
18 Brahm Norwich (2002), *LEA inclusion trends in England 1997-2001* (Bristol: CSIE)
19 Ofsted (1999), *Special Education 1994-98. A review of special schools, secure units and pupil referral units in England* (London: The Stationery Office)
20 Richard Rieser, Disability Equality in Education, at the CSIE Day Conferences 'An inclusive approach to difficult behaviour', 25 November 1998 and 1 March 1999
21 James Kilner, November 2001, in interview for ongoing CSIE enquiry, *Working with the Index for Inclusion*
22 Unpublished CSIE case study (2001). See also Priscilla Alderson, ed (1999), *Learning and Inclusion: The Cleves School Experience* (London: David Fulton Publishers)
23 Paul Howard, Newham Education Authority, at the CSIE Day Conferences 'An inclusive approach to difficult behaviour', 25 November 1998 and 1 March 1999
24 OECD (1999), *Inclusive Education at Work: Students with Disabilities in Mainstream Schools* (Paris: OECD)
25 Audit Commission/HMI (1992), *Getting in on the Act: Provision for Pupils with Special Educational Needs – the National Picture* (London: HMSO)
26 Audit Commission (2002), *Statutory assessment and statements of SEN: in need of review?* (London: Audit Commission)
27 UN Economic and Social Council (1999), *Report submitted by Katarina Tomasevski, Special Rapporteur on the right to education Addendum Mission to the United Kingdom of Great Britain and Northern Ireland (England) 18–22 October 1999*, E/CN.4.2000/6/Add.2
28 Katarina Tomasevski (2001), *Removing obstacles in the way of the right to education*, Rights to Education Primer No.1 (Stockholm: Swedish International Development Cooperation Agency; Lund: Raoul Wallenberg Institute of Human Rights and Humanitarian Law)
29 UN Economic and Social Council (2002), *Annual report of the Special Rapporteur on the right to education*, E/CN.4/2002/60

further barriers to inclusion

Legislative shortcomings

The enactment in 2002 of the Special Educational Needs and Disability Act 2001 (SENDA) represented a significant advance towards greater inclusion in the UK. By repealing two of the conditions in the 1996 Education Act on mainstream placement for children with statements – namely that it is compatible with them receiving the necessary special educational provision and 'the efficient use of resources' – children's rights to mainstream education are considerably strengthened. A child with a statement of 'special educational needs' should now attend a mainstream school unless that is incompatible with 'the provision of efficient education for other children' or the wishes of the parent. An LEA cannot refuse to place a child in a mainstream school unless it can show that there are no 'reasonable steps' that could be taken to prevent the incompatibility.

SENDA also amends the 1995 Disability Discrimination Act to cover disabled learners. In September 2002, it became unlawful for schools and further and higher education institutions to discriminate against disabled students and potential students in admissions, exclusions, and education and associated services. By law, reasonable adjustments must be made to ensure that disabled learners are not put at a substantial disadvantage in comparison with non-disabled learners, and LEAs have a duty to plan for increased access to schools in terms of curriculum, physical access and information.

These legislative advances provide welcome support for those with a real desire to see inclusion in education, and an incentive for those less committed to inclusion to improve the accessibility of mainstream education. However, there remain legislative loopholes which will inevitably mean that some families will still have to fight through the courts and tribunals for mainstream education.

The elimination of two of the conditions on mainstream placement is a general one. No such amendments are introduced into the law on making and maintaining statements of 'special educational needs' in Schedule 27 of the 1996 Act, which means that attendance at any particular mainstream school is still subject to all four caveats that have diminished the duty to include since the law came into force in 1983. Attendance is conditional on the needs of the child being met, the efficient use of resources, the efficient education of other pupils, and parents' wishes. This elevation of parental choice over the child's rights, greater expectation of disruption to education and assumed drain on resources are all contrary to the principles of inclusion and children's rights to education.

The complexity of duties and responsibilities in the legislation, largely as a result of retaining the 'special educational needs' framework, is likely to lead to confusion and delay in effecting change for disabled learners. The reasonable adjustments that schools must make to avoid discriminating against disabled pupils do not include the provision of aids and services, which will be provided through the 'special educational needs' framework. Physical alterations to schools are not covered by the reasonable adjustments duty because they are expected to come about through the longer term planning duties.

Another promising piece of legislative development was the enactment of the 1998 Human Rights Act in 2000, which incorporates the European

Convention on Human Rights (1950) into UK law. However, this falls short of granting a legal right to education. Rather, the right is 'not to be denied education'. As such, it fails to introduce the broader rights connected with education in the 1989 UN Convention on the Rights of the Child and the consequent obligations on governments associated with this and other international human rights treaties. The Government has also entered a reservation to the effect that respecting the right of parents to educate their children in accordance with their philosophical convictions is conditional on being 'compatible with the provision of efficient instruction and training and the avoidance of unreasonable public expenditure'. As Sandy Ruxton, in a report for Save the Children, has explained:[30]

> the European Convention of Human Rights will not, of itself, provide an adequate framework for the protection of children's rights. The European Convention on Human Rights only addresses a limited range of children's rights, lacks a specific child focus, and provides a lower set of standards than those set out in the UN Convention on the Rights of the Child.

The report written by the UN Special Rapporteur on the right to education following her visit to the UK in 1999 summarises the UK's position on the Human Rights Act and the right to education:[31]

> The right to education is thus confined to parental rights concerning their children's education and non-discriminatory access to the existing public educational institutions, further limited by the qualification that the Government's financial obligations remain reasonable.

In contrast to the lack of explicit recognition of children's human rights in domestic UK education law, the Government has adopted a pioneering rights-based approach to international cooperation and development, linking international aid with the promotion of children's rights in 'poorer countries'.[32] This rather narrow and patronising way of thinking about human rights was a cause for concern to the UN Special Rapporteur. The official report of her examination of the forthcoming citizenship curriculum during her 1999 visit records her unease:

> ... 'human rights' are perceived as different from and alien to the rights and freedoms that learners will recognize in their everyday lives – their rights as subjects of the right to education, as future employees, as future parents or voters. 'Human rights' seems identified with international issues and foreign countries and dissociated even from concepts such as equal opportunities and gender equality.

Inattention to acceptability and adaptability

From the human rights perspective, Government responsibilities for inclusive education require attention to the availability, accessibility, acceptability and adaptability of education. Reporting on her 1999 visit to the UK, the UN Special Rapporteur stated:

> A widespread, if erroneous, image of the right to education equates it with availability of schools and teachers. Where schools are available, as is the case in England, further questions would then not be asked, precluding the inquiry from advancing from statistical availability of schools to the right to education. This right entails, besides availability of schools, governmental human rights obligations to make schooling accessible, acceptable and adaptable.

The implementation of SENDA is likely to have a positive impact on the accessibility of schools to disabled learners. The duty on LEAs and schools to prepare accessibility strategies and plans, and the anticipatory nature of this duty – schools and LEAs should consider the possible future needs for increased access rather than waiting for and then responding to the needs of specific individuals – means that all education settings will become more accessible, regardless of whether disabled learners are currently attending.

However, fully realising children's rights to inclusive education requires the Government to take seriously its responsibilities for the adaptability of education to the full diversity of learners and the acceptability of education in terms of human rights standards.

Properly inclusive education entails adapting the way people think about learners who experience difficulties and those whose behaviour is challenging. It necessitates a social model approach to diversity, making links between the many different factors that currently prevent schools from responding to some learners. It means revising notions of 'special educational need' predicated upon ideas of what is 'normal' and seeing diversity as a resource in itself rather than as a problem to overcome. It means putting the best interests of the child first, including the child's right to inclusive education, at the heart of decision making.

Making education acceptable according to human rights standards means paying attention to the purposes of education not only in terms of qualifications and outcomes but in terms of enabling all people to live together on the basis of non-discrimination and equality, and the development in every individual of a sense of worth and dignity and a respect for the worth and dignity of others.

Contradictory purposes of education

Emphasis in UK education policy and law has long been on raising achievement. The more recent attention to inclusion as a guiding principle has been incorporated with apparent ease. The Department for Education and Skills states in its 2002 departmental report[33] that its aim is to help build 'a competitive economy and inclusive society'. It sees no conflict between the twin goals of inclusion and achievement:

> Raising educational attainment and skills in every community is key to building a successful, competitive economy and a fair, prosperous and inclusive society.

That the aims and purposes of education in the UK are at odds with human rights concerns with inclusion and with education which should develop 'respect for human rights and fundamental freedoms' is well recognised in reports by UN treaty bodies. In her 1999 report on the UK, the UN Special Rapporteur on the right to education stated:

> Emphasis on education-as-investment and on competitiveness tends to undermine education which is defined by the objective of strengthening the ties which bind people … the impact of the league tables has been to penalize schools' investment in learners with disabilities and thus to hamper the adaptation of mainstream schools to children with disabilities, segregating them in special schools.

Elsewhere in the report she explains:

> Individualism and competitiveness as root values clash with solidarity and community. Parents' concerns about the educational attainment of their own children easily leads to ability-based screening and the consequent exclusion of less able children. Inequalities between learners and schools tend to become accentuated and exacerbated, not perceived as a human rights issue that ought to be addressed so as to familiarize children to accepting and assisting their peers, but rather as a legitimate differentiation enhancing individualism and competitiveness. This has created a paradox: schools are expected to instil values of solidarity and individual competitiveness at the same time.

The aims of education as set out in the 2001 UN General Comment on Article 29 of the Convention on the Rights of the Child[34] emphasise the importance of the *process* of education:

> ... efforts to promote the enjoyment of other rights must not be undermined, and should be reinforced, by the values imparted in the education process. This includes not only the content of the curriculum but also the educational processes, the pedagogical methods and the environment within which education takes place, whether it be the home, school, or elsewhere. Children do not lose their human rights by virtue of passing through the school gates. Thus, for example, education must be provided in a way that respects the inherent dignity of the child and enables the child to express his or her views freely in accordance with article 12(1) and to participate in school life ... Compliance with the values recognized in article 29(1) clearly requires that schools be child-friendly in the fullest sense of the term and that they be consistent in all respects with the dignity of the child.

Given the improvements in teaching and learning that result from an inclusive approach to education it is not surprising that schools which have implemented inclusive policies, such as those in the London Borough of Newham, have seen general attainment levels rise. The Government's statutory guidance on the new framework for inclusion[35] observes that schools which have systematically attempted to develop inclusive practices have seen standards rise. However, the competitive underpinning of a focus on attainment inevitably results in learners who achieve differently being valued differently – clearly a breach of the human rights principle of the equal worth of all human beings.

The problem is that it is still too often assumed that raising standards must mean separating those who perform at different levels of attainment. As a result, many of the policies and initiatives aimed at raising achievements and standards – such as the various forms of selection by ability, national tests, performance league tables, competition for specialist and beacon status – in effect generate exclusionary pressures which militate against the development of educational inclusion.

The UN Special Rapporteur saw the introduction of citizenship to the national curriculum as one way of addressing this narrowness of educational aim in the UK. Undoubtedly the citizenship curriculum offers a chance to educate children and young people about issues of identity, diversity, equal opportunities, and human rights. The involvement of the Disability Rights Commission in producing citizenship materials on disability rights is to be welcomed.

However, education about human rights without human rights *in* education is pointless. So long as children continue to be segregated for their education,

certain groups will continue to be seen as 'other'. Without a real commitment to educating all children together in re-structured mainstream schools, recent legislative advances could represent little more than lip service to inclusion.

30 Sandy Ruxton (1998), *Implementing children's rights: What can the UK learn from international experience?* (London: Save the Children)

31 UN Economic and Social Council (1999), *Report submitted by Katarina Tomasevski, Special Rapporteur on the right to education Addendum Mission to the United Kingdom of Great Britain and Northern Ireland (England) 18-22 October 1999*, E/CN.4/2000/6/Add.2

32 Dept of Health (1999), *Convention on the Rights of the Child: Second Report to the UN Committee on the Rights of the Child by the United Kingdom* (London: Dept of Health)

33 DfES/Ofsted (2002), *The Government's Expenditure Plans 2002-03 to 2003-04: Department for Education and Skills and Office for Standards in Education Departmental Report* (London: HMSO)

34 UN Convention on the Rights of the Child (2001), *The Aims of Education General Comment No.1 Article 29(1)*, CRC/GC/2001/1

35 DfES (2001), *Inclusive Schooling: Children with Special Educational Needs* (London: DfES)

conclusion and action points

It is important to build on the positive steps towards inclusion that have been taken in recent years. In particular, the disability discrimination laws and the duty on schools and LEAs to plan for increased accessibility should significantly reduce the segregation and exclusion of disabled pupils from mainstream education. However, fully inclusive education – the elimination of discrimination and the equalisation of opportunities for all students – requires far more.

The central problem in the development of inclusive education in the UK is a culture that rests on the continuing philosophical, financial and legislative support of segregated schooling, which has its roots in education services first designed 120 years ago. Legislative shortcomings, a focus on availability and accessibility at the expense of acceptability and adaptability, and contradictory messages about the purposes of education create the conditions in which special schools continue to play a role, despite the stated commitment to social and educational inclusion. Their existence is rationalised by appeals to deeply held false beliefs about the impossibility of ever including all children in the mainstream, the supposedly 'huge expense' of full inclusion, and the sanctity of parental choice.

The central task in developing real inclusive education, then, must be the phased closure of special schools, the transfer of all resources to mainstream settings, and the restructuring of mainstream schools to increase their capacity to respond to student diversity in its entirety.

Logically, it is not difficult to challenge the belief systems which are used to rationalise segregated provision for some students. That some children cannot possibly be included in mainstream education is refuted by the many successful experiences of including disabled students with high level support needs and those presenting challenging behaviour, to the benefit of all learners. Continuing to pour resources into statutory assessment and statementing and segregated special schools has been demonstrated as a highly inefficient use of public money. Transferring these resources to mainstream settings would offset the costs of inclusion. A real commitment to the human rights of children would address the current elevation of parents' rights.

In practice, these obstacles are less easily overcome because the process requires changing hearts and minds. The human rights approach demands a fundamental conviction that all human beings are of absolutely equal worth, simply by virtue of being human. Without this conviction, it is possible for special schools to continue to be supported despite being detrimental to children's best interests, contrary to the development of social inclusion, highly discriminatory, and an economically and educationally inefficient use of

public money. With this conviction, it is possible that the ensuing sense of outrage will be sufficient to demand an end to the systematic violation of children's human rights through segregation.

The future development of inclusive education in which every child is able to enjoy the right to education on the basis of equal opportunity and non-discrimination should have as its starting points:

- the removal of all the remaining constraints on access to mainstream;
- the recognition of the system of segregated special schools as a self-validating set-up inherently wasteful of resources and seriously violating children's human rights, including – but not only – their right to fully supported, inclusive mainstream education. The vested interests in maintaining the status quo need to be acknowledged and creative ways found to redirect energies and resources towards the inclusive education of all children and young people;
- a review of the system of identification, assessment and statementing, and its associated language of 'special educational needs', especially in view of its conflict with the social model of disability;
- a much higher priority given to the rights of the child as conceptualised in the UN Convention on the Rights of the Child, and including the right to inclusive education, especially for those children at risk of exclusion because of disability and difficulties in learning;
- an acknowledgement by the Government of the serious consequences of violating children's human rights through exclusion and segregation in education. The existence of special schools is not only incompatible with inclusion, but it undermines the very foundation of human rights – the equal worth of all human beings;
- a commitment to promoting human rights in education, as well as teaching about human rights. The conflict between, on the one hand, advocating non-discrimination and participation for disabled people in society and, on the other, continuing to segregate disabled children in education should be acknowledged and addressed. A view of citizenship which not only informs learners about disability rights but also practices them in the classroom should be promoted through the new citizenship curriculum;
- an acknowledgement of the conflicts inherent in the competing purposes and aims of education and the development of a better balance between equipping young people with qualifications and enabling them to live dignified lives in a diverse society. The exclusionary pressures inherent in many of the Government's policies should be challenged and ways found to encourage and reward a school's capacity to respond to diversity.

For inclusion to become a reality for all children and young people, there needs to be a total commitment to providing education for all children and young people in the mainstream. The growth of inclusive education in the UK requires the full adoption of a human rights approach to education and the replacement of the vested interests of adults with the best interests of children at the heart of development. ■

additional resources

In addition to the references given in the notes at the end of each section, the following books and websites are useful sources of information:

Books

Felicity Armstrong & Len Barton, eds (1999), *Disability, Human Rights and Education: Cross-cultural perspectives* (Buckingham: Open University Press)

Rowena Daw (2000), *Human Rights and Disability: The Impact of the Human Rights Act on Disabled People* (report for the Disability Rights Commission/The Royal National Institute for Deaf People)

Craig Donnellan, ed. (2001), *Disability Rights* (Cambridge: Independence)

Sandhya Drew (2000), *Children and the Human Rights Act* (London: Save the Children)

Hazel Jones (2001), *Disabled Children's Rights – a practical guide* (Stockholm: Save the Children Sweden)

Sarah Muscroft, ed. (2000), *Children's Rights: Equal Rights? Diversity, difference and the issue of discrimination* (London: Save the Children)

Janusz Symonides, ed. (1998), *Human Rights: New Dimensions and Challenges* (Paris: UNESCO)

Useful websites

Child Rights Advocacy Project (Save the Children) *www.savethechildren.org.uk/mcr/index.htm*

Child Rights Education International *www.childrightseducation.org*

Child Rights Information Network *www.crin.org*

Children's Rights Alliance for England *www.crights.org.uk*

Council of Europe Human Rights Web *www.humanrights.coe.int*

Disability Awareness in Action *www.daa.org.uk*

Disability Rights Commission *www.drc-gb.org*

Disabled People's International Europe *www.dpieurope.org*

JURIST The Legal Education Network *http://jurist.law.pitt.edu*

Lord Chancellor's Dept People's Rights *www.lcd.gov.uk/foi/rights.htm*

Office of the UN High Commissioner on Human Rights *www.unhchr.ch*

The Right to Education Project *www.right-to-education.org*

UNESCO *www.unesco.org*

United Nations *www.un.org*

University of Minnesota Human Rights Library *www1.umn.edu/humanrts/*

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Frenchay Campus
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Bristol BS16 1QU
UK
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